

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
IN SEATTLE**

DAEIL RO,

Plaintiff,

vs.

EVEREST INDEMNITY INSURANCE
COMPANY, a foreign insurance company;
BROWN & BROWN PROGRAM
INSURANCE SERVICES, INC., a
California corporation d/b/a LANCER
CLAIMS SERVICES

Defendants.

No. 2:16-cv-664 RSL

AMENDED COMPLAINT FOR
DAMAGES AND DECLARATORY
RELIEF

JURY DEMANDED

Plaintiff Daeil Ro alleges as follows:

I. PARTIES

1. Plaintiff Daeil Ro is an individual who resides in Washington.
2. On information and belief, Defendant Everest Indemnity Insurance Company (“Everest”) is a corporation formed under the laws of Delaware and having its principal place of business in New Jersey.

AMENDED COMPLAINT FOR DAMAGES AND
DECLARATORY RELIEF - 1

No. 2:16-cv-664 RSL

HARPER | HAYES PLLC
One Union Square
600 University Street, Suite 2420
Seattle, Washington 98101
Telephone: 206-340-8010
Facsimile: 206-260-2852

3. On information and belief, Defendant Brown & Brown Program Insurance Services, Inc., d/b/a Lancer Claims Services (“Lancer”), is a corporation formed under the laws of California and having its principal place of business in California. As to the allegations stated in this Complaint, Lancer acted either as Everest’s agent (for whose actions Everest is liable), acted in concert with Everest (in which case joint and several liability shall be imposed), or acted outside the scope of its authority as to the actions at issue in this lawsuit.

II. JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendant Everest in part because Everest transacts business within Washington and contracts to insure persons and risks located in Washington, and is thus subject to jurisdiction under RCW 4.28.185, Washington’s Long Arm Statute.

5. This Court has personal jurisdiction over Defendant Lancer in part because it transacts business within Washington, and is thus subject to jurisdiction under RCW 4.28.185, Washington’s Long Arm Statute.

6. Subject matter jurisdiction is proper under 28 U.S.C. § 1332(a)(1) because Defendants are citizens of states other than the state where Plaintiff is a citizen, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(1), (c)(2), and (d) because Defendants are subject to the Court’s personal jurisdiction with respect to this action.

III. FACTS

8. Everest issued Securities Broker/Dealer and Registered Professional Liability Insurance Policies to certain Ameriprise entities, with Ameriprise Financial Services, Inc., American Enterprise Investment Services, Inc., and Ameriprise Advisor Services, Inc.

1 identified as named insureds. Such policies include policy number FL5EO00016-141, with a
2 January 1, 2014 to January 1, 2015 policy period (the “Policy”).

3 9. As a Registered Representative for Ameriprise Financial Services, Inc.,
4 Plaintiff is an insured under the Policy.

5 10. In early 2014, an individual named Fumitaka Kawasaki (“Kawasaki”)
6 contacted Plaintiff to request the return of funds invested in businesses located in South Korea.

7 11. Plaintiff timely notified Everest of Kawasaki’s claim. On May 2, 2014, Lancer,
8 on behalf of Everest, responded to Plaintiff’s notice. Everest and Lancer disclaimed any duty
9 to defend or indemnify Plaintiff.

10 12. Everest’s May 2, 2014 denial relied in part on the Policy’s “retroactive date”
11 exclusion: “Based upon our investigation, your Retroactive Date with Ameriprise Financial
12 Services, Inc. is March 21, 2012. However, it appears the alleged error occurred on February
13 6, 2002, when the client worked through you to purchase the Korean real estate property.”

14 13. Everest’s May 2, 2014 denial also stated that the activities complained of did
15 not meet the Policy’s definitions of “Approved Activity” or “Professional Services,” and were
16 therefore excluded.

17 14. On April 30, 2015, Kawasaki filed a lawsuit against Plaintiff and Plaintiff’s
18 father, Myung Ro, in the Superior Court of Washington for King County under case number
19 15-2-10562-1 KNT (the “Underlying Action”).

20 15. The Complaint in the Underlying Action included the allegations Kawasaki
21 made in 2014. But the Complaint also contained additional allegations, such as alleged
22 wrongdoing by Plaintiff occurring in 2013 and allegations involving investments other than
23 the South Korean businesses.

1 defense of Plaintiff was unreasonable, frivolous, or unfounded; (e) by virtue of Defendants'
2 acts, omissions, and breaches, Plaintiff is excused from all conditions allegedly imposed by
3 the Policy; and (f) by virtue of Defendants' acts, omissions, and breaches, Everest is estopped
4 from denying coverage for the settlement entered into by Plaintiff in the Underlying Action.

5 **COUNT II**
6 **Breach of Contract**
7 **(As to only Everest)**

8 23. Plaintiff re-alleges the preceding paragraphs as though fully set forth herein.

9 24. Plaintiff is an insured under the Policy, and therefore a contractual relationship
10 exists between Plaintiff and Everest.

11 25. Under the provisions of the Policy, Everest was obligated to defend and
12 indemnify Plaintiff in the Underlying Action.

13 26. Everest materially breached its contractual obligations to defend, indemnify,
14 and settle under the Policy.

15 27. Everest's breaches caused harm to Plaintiff.

16 **COUNT III**
17 **Violation of RCW 48.30.015 – Washington's Insurance Fair Conduct Act**

18 28. Plaintiff re-alleges the preceding paragraphs as though fully set forth herein.

19 29. Plaintiff is a first party claimant to the Policy within the meaning of RCW
20 48.30.015(4).

21 30. Defendant Everest unreasonably denied a claim for coverage or payment of
22 benefits by refusing to defend or indemnify Plaintiff in the Underlying Action.

23 31. Defendant Everest violated WAC 284-30-330, and thus violated RCW
48.30.015(5), by, among other things: (a) misrepresenting pertinent facts or insurance policy
provisions; (b) failing to adopt and implement reasonable standards for the prompt

1 investigation of claims arising under insurance policies; and (c) refusing to pay claims without
2 conducting a reasonable investigation.

3 32. Defendant Everest's violation of RCW 48.30.015 caused harm to Plaintiff in an
4 amount to be proven at trial.

5 33. On March 25, 2016, Plaintiff provided Defendant Everest and the Office of the
6 Insurance Commissioner with written notice of his intent to bring a cause of action under RCW
7 48.30.015.

8 34. More than 20 days have passed since Plaintiff provided his RCW 48.30.015
9 notice to Defendant Everest, and Defendant Everest has failed to resolve the basis for the
10 action.

11 **COUNT IV**
Consumer Protection Act

12 35. Plaintiff re-alleges the preceding paragraphs as though fully set forth herein.

13 36. The business of insurance is one affected by the public interest under RCW
14 48.01.030.

15 37. Defendants' violations of WAC 284-30-330 constitute unfair or deceptive acts
16 or practices occurring in trade or commerce in violation of Washington's Consumer Protection
17 Act, RCW Chapter 19.86.

18 38. Defendants' violation of the Washington's Consumer Protection Act caused
19 injury to Plaintiff's business or property in an amount to be proven at trial.

20 **COUNT V**
Insurer Bad Faith

21 39. Plaintiff re-alleges the preceding paragraphs as though fully set forth herein.
22
23

2. For an award of all money damages legally available as a result of the Defendants' acts, omissions, or breaches;

3. For an award of treble damages as authorized by RCW 19.86.090 and RCW 48.30.015(2);

4. For an award of reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, as authorized by RCW 48.30.015(3), RCW 19.86.090, and pursuant to Olympic Steamship Co., Inc. v. Centennial Ins. Co., 811 P.2d 673 (Wash. 1991), and other applicable law;

5. For an award of pre- and post-judgment interest, as applicable; and

6. For such other further relief as the Court deems just and equitable.

VI. JURY DEMAND

Plaintiff demands a trial by jury in accordance with Fed. R. Civ. P. 38.

DATED this 29th day of August 2016.

HARPER | HAYES PLLC

By: s/ Gregory L. Harper

Gregory L. Harper, WSBA No. 27311

s/ Charles K. Davis

Charles K. Davis, WSBA No. 38231

s/ Thomas M. Williams

Thomas M. Williams, WSBA No. 47654

600 University Street, Suite 2420

Seattle, WA 98101

Tel. 206.340.8010

Fax. 206.260.2852

Email: greg@harperhayes.com

cdavis@harperhayes.com

twilliams@harperhayes.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

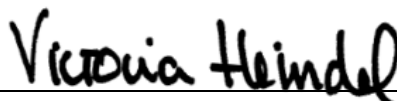
Pursuant to United States District Court Western District of Washington CR 5(f), the undersigned certifies that on *Monday, August 29, 2016*, I electronically filed this document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following parties and counsel of record:

NAME: Daniel R. Bentson
EMAIL ADDRESS: dan.bentson@bullivant.com
REPRESENTING: Defendants Everest Indemnity Insurance Company and Brown & Brown Program Insurance Services, Inc., d/b/a Lancer Claims Services

NAME: Owen Mooney
EMAIL ADDRESS: owen.mooney@bullivant.com
REPRESENTING: Defendants Everest Indemnity Insurance Company and Brown & Brown Program Insurance Services, Inc., d/b/a Lancer Claims Services

I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED *August 29, 2016* in Seattle, Washington.


Victoria Heindel